

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: LIGHTNING AIRCRAFT CORPORATION

FAA Order No. 2012-7
FDMS No. FAA-2011-1124¹

Served: July 9, 2012

ORDER DISMISSING APPEAL²

Respondent Lightning Aircraft Corporation filed a timely notice of appeal, but has failed to perfect its appeal by filing an appeal brief. Its appeal brief was due on April 12, 2012.³ Complainant Federal Aviation Administration has moved to dismiss Respondent's appeal.

The Rules of Practice provide that where a party has failed to perfect its appeal by filing a timely appeal brief, the FAA decisionmaker may dismiss the appeal. 14 C.F.R. § 13.233(d)(2).⁴ However, when a notice of appeal contains sufficient detail to satisfy the requirements in the Rules of Practice for appeal briefs,⁵ the notice may be construed as an appeal brief. *Keller*, FAA Order No. 2011-2 at 7 (January 11, 2011).

¹ Generally, materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at <http://www.regulations.gov>. 14 C.F.R. § 13.210(e)(1).

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/. See 14 C.F.R. § 13.210(e)(2). In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

³ Section 13.233(c) of the Rules of Practice, 14 C.F.R. § 13.233(c), provides as follows: "Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker." Section 13.211(e) provides: "Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period."

The Administrative Law Judge (ALJ) served his written initial decision entitled "Order of Chief Administrative Law Judge Granting Motion to Dismiss Request for Hearing and Assessing a Civil Penalty," on February 17, 2012. As a result, Respondent's appeal brief was due on April 12, 2012.

⁴ Section 13.233(d)(2) provides: "The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker."

⁵ Section 13.233(d)(1) provides:

In the instant case, Respondent's two-sentence notice of appeal lacks sufficient detail to be construed as an appeal brief. *IAL Power Supply*, FAA Order No. 2002-10 at 2 (April 17, 2002) (similarly finding that the notice of appeal did not provide sufficient detail to be construed as an appeal brief). Therefore, Respondent's appeal is dismissed, and the ALJ's order assessing a \$6,600 civil penalty remains in effect.

MICHAEL P. HUERTA
ACTING ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki Leemon]

VICKI LEEMON⁶
Manager, Adjudication Branch

A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

⁶ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.